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FOREIGN SERVICE DESPATCH

FROM : US POLAD, TOKYO

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TO : THE DEPARTMENT OF STATE, WASHINGTON.

November 20, 1951

DATE

REF : Dept's A-296, November 5, 1951

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SUBJECT: Publicity Regarding Projected FCN Treaty

Pursuant to the Department's request in the airgram under reference, there are transmitted herewith a translation of the article concerning negotiations for a United States-Japan Treaty of Commerce and Navigation which appeared in the October 21, 1951 issue of the Tokyo Shimbun, and a single copy of an article giving the text of the proposed treaty which appeared in the October 29, 1951 issue of the English-language edition of the Mainichi. A summarized version of the latter article appeared in the Japanese-language edition of the Mainichi on the same date.

For the Political Adviser:

Charles N. Spinks
First Secretary of Mission

Enclosures:

- ✓ (1) Copy of translation from Tokyo Shimbun, Oct. 21, 1951.
- ✓ (2) Single copy of article from Mainichi Oct. 29, 1951.

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C O P Y

TOKYO SHIMBUN (Summary of Article)

Eve October 21, 1951

Unofficial Negotiations On U.S.-Japan Treaty of Commerce And Navigation Begin. In Principle, No Restrictions Set on Foreign Exchange. Catches of Fish Are Excluded From Most-Favored-Nation Treatment.

(By our correspondent Sakai, Wash., 20th) - In an attempt to conclude a friendly treaty of commerce and navigation as promptly as possible after the peace treaty comes into force, thereby rendering economic and cultural ties between the two countries close, and also, in an attempt to set a precedent in the conclusion of this type of treaty before other nations set to the task, it appears likely that the United States Government, which has thus far been given in a serious study on the subject, is currently conducting preliminary negotiations on an equal footing with the Japanese Government unofficially, although primarily the negotiations are to be conducted with Japan after the Peace Treaty comes in force. The new treaty of commerce and navigation, as compared with the former one denounced in 1940, is likely to cover a wider range of articles, including matters concerning trade, settlements of accounts, payments, etc., satisfying the demands in modern times. Thus, the treaty seemingly is designed to give a definite guide to the problems to which presently American enterprisers and financial circles are paying keen attention, covering the article concerning the refundment of principal and accrued interest for the funds American entrepreneurs invested in Japan. It is observed that the following are the highlights of the draft treaty of commerce and navigation that have been revealed up to the present:

Exceptional Regulations in Customs Union.

- Art. 1. The Governments of both countries shall constantly accord fair treatment to the subjects, their properties and enterprises, and to the interests of individuals and companies, of respective partner country.
- Art. 5. In case legal issues occur, whether they are defendants or plaintiffs, all shall hold lawful rights under the principle of the native subject treatment and of the most-favored-nation treatment.
- Art. 6. Offices, houses, warehouses, factories, and other real estates shall be protected fully under the principle of the native subject treatment and of the most-favored-nation treatment.
- Art. 7. All those who are engaged in the following activities - namely, commerce, manufacturing industry, processing work, construction of buildings, publication, science, religion, philanthropic work, free trade (medical practioners, pressmen, lawyers), - shall be given the native subject treatment and the most-favored-nation treatment.
- Art. 12. This Article covers the following problems, viz., a) Relation between the exchange control and the repayment of principal and accrued interest of investments in Japan; b) Relation between

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the repayment of principal and accrued interest of investments in Japan and the International Monetary Fund in which Japan will be admitted; c) Compensation to be made when one's immovable assets are forcibly expropriated; d) Payment of salaries, interest, profits gained in enterprises, commission, royalty, technical services, etc. It seems that due consideration is being paid to the above-mentioned subjects, so that American entrepreneurs and investors are enabled to have full understanding on their investments.

To explain in short about the contents of Article 12, the restrictions on exchange mean all kinds of restrictions, regulations, charges, taxes, etc. in the case of payments, remittance of money, transfer of funds, accommodation of money, securities, etc.; but under this Article 12, it is regulated that all restrictions shall not be imposed unless it is deemed necessary to do in order to check an extreme dwindling of foreign currency holdings or in order to increase the volume of foreign currency holdings which have decreased to a considerable degree. In case restrictions are imposed on the foreign exchange, exceptional regulations shall be laid down in order to secure necessary foreign exchange assuring the acquisition of goods and services essential to the welfare and health of the people. Regulations concerning restrictions on the foreign exchange will not be applied in the following cases in which it is deemed necessary to keep the health and welfare of the people, - namely, compensation to be made for real assets which were forcibly expropriated for public purposes; payment of salary, interest, dividends, commission, royalty, technical services; money necessary to refund debts; transfer of funds, etc.

In case more than one exchange rate is used, the rate of exchange which the International Monetary Fund has recognized for the above-mentioned special approval is given by the International Monetary Fund on the matter of the exchange rate, a lawful and reasonable rate of exchange, including taxes or charges, will be used. In case restrictions are imposed on the foreign exchange, no disadvantageous and discriminatory treatment will be given to investments, claims, transportation, foreign trade, etc.

Art.14. This Article deals with the matter concerning the most-favored-nation treatment for import and export business.

Under this Article 14, it is ruled that this Article shall not be applied in case the customs union in which one party country takes part or the free trade areas are utilized, and also, even in case in which it is attempted to utilize this article advantageously under a provisional treaty which is aimed at setting up a customs union or a free trade area. In such a case, it will be applied after one participant country has communicated such a plan to other country, enabling the latter to have an ample time to express its views.

For reference, this Article seems to cover the regulation that it shall not be applied to catches of fish (including products of fish). In this connection, it is conceivable that the U.S. Government has refrained from according the most-favored-nation treatment to this kind of goods, in view of the fact that

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fishermen's associations along the Pacific Coast of the U.S. have been launching movements towards the Congress for fear of free competition with Japanese fishermen dealing in the business of refrigerated and canned tuna...

Article Concerning Immigration Is Omitted

It appears that no article concerning immigration is provided for under the present draft treaty, and it is feared that the problem may be taken up in the Senate when ratification of this treaty of commerce and navigation is made, whereas it is a very delicate issue. To put it more precisely, the law of immigration and that of naturalization are both American domestic laws, and at present, no right of denaturalization is recognized to Japanese. While the Chinese, Indians, and other peoples are enjoying the right of denaturalization, only the Japanese and Koreans are being treated discriminately in this respect. As is widely known, foreigners having no right of denaturalization are not authorized to enter under the immigration quota.

Therefore, the Japanese firms in the U.S., collecting fairly large amounts of money, have continued to make an appeal to American Congress every year in this regard. Yet the bill has not yet been approved although it has appeared to pass every year. Inasmuch as it is difficult to settle the problem after the draft treaty of commerce and navigation has been prepared, the Japanese Government should express its desires that the present indiscriminate treatment, which runs counter to the principles of the U.S., be revised as early as possible. Although the problem is evidently far from being settled only by the will of the U.S. Government, nevertheless it may be settled much earlier as a great majority of Congress-men have full understanding on the issue, provided that the assertion of the Japanese Government, the Japanese national sentiment and public opinion appearing in the Diet and newspapers are reported continuously to the American Congress in a clear-cut shape.

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The Mainichi

ENC. 2-US POLAD 781

十九日十月

MONDAY, OCTOBER 29, 1951

大正二十一年十月十九日

Treaty Of Friendship, Commerce, Navigation Between US And Japan Set For Negotiation In November

TOKYO, Oct. 28.—The long awaited friendship, commerce and navigation treaty between the United States and Japan will be finally negotiated officially by the two countries from the middle of November.

The treaty will be based on the principle of the reciprocity of most-favored nation treatment.

In preparation for the negotiations, the Japanese Government has been studying fundamental and technical points for the draft of the treaty since 1948. Indications are that emphasis will be placed on the broadened sphere of business activities, development of enterprises and investments of mutual benefit.

It is reliably learned that the draft treaty will be the basic pattern for future similar treaties with other countries.

The proposed treaty consists of a preamble and 35 articles.

They are: 1. Entry, Sojourn, Travel and Residence of Foreign Nationals; 2. Status of Foreign Corporations; 3. Activities of Foreign Nationals and Corporations; 4. Freedom of Conscience and Religion; 5. Property Rights; 6. Organization of and Participation in Domestic Corporations; 7. Protection of persons and property; 8. Judicial Rights of Foreign Nationals and Corporations; 9. Military Service; 10. Taxation of Persons and Corporations; 11. Recognition of Nationality of Vessels; 12. Entry of Foreign Vessels; 13. Treatment of Merchant Vessels and Cargoes; 14. Jurisdiction of Littoral States Over Foreign Vessels; 15. Vessels Taking Refuge or in Distress; 16. Carriage of Cargoes and Passengers; 17. Coastal Trade and Inland Navigation; 18. Customs Duties on Imports and Exports; 19. Prohibition or Restriction on Importation and Exportation; 20. Internal Taxation on Imported Articles; 21. Transit; 22. Exchange Control; 23. Customs Administration; 24. Valuation for Customs Purposes; 25. State Trading; 26. Cartels and Restrictive Business Practices; 27. False Indication of Origin; 28. Industrial Property; 29. Commercial Travelers; 30. Duty-Free Admission of Samples; 31. General Exceptions; 32. Settlement of Disputes; 33. Ratification and Termination.

The salient articles of the proposed treaty draft as prepared by the Japanese Government are:

Article III

1. The nationals, corporations and associations of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted to engage in commercial, manufacturing, processing, construction, publishing, scientific, educational, religious, philanthropic and professional activities upon terms no less favorable than those which are or may hereafter be accorded to nationals, corporations and associations of such other High Contracting Party and of any third country.

2. The nationals, corporations and associations of either High Contracting Party shall, with respect

to the following activities, receive treatment no less favorable than the treatment which is or may hereafter be accorded to the nationals, corporations and associations of any third country:

(a) exploring for and exploiting mineral resources, and

(b) engaging in fields of economic and cultural activity other than those listed in the preceding paragraph or in subparagraph (a) of the present paragraph.

Article VI

1. The nationals, corporations and associations of either High Contracting Party shall enjoy, throughout the territories of the other High Contracting Party, rights with respect to creation or organization of and participation in corporations and associations of such other High Contracting Party, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country.

Corporations and associations of either High Contracting Party, created, organized or participated in by nationals, corporations and associations of the other High Contracting Party pursuant to the rights enumerated in this paragraph, shall be permitted to exercise the functions for which they are created or organized upon terms no less favorable than those now or hereafter accorded to corporations and associations that are created, organized or participated in by nationals, corporations and associations of any third country.

2. The nationals, corporations and associations of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party, to create, organize or participate in corporations and associations of such other High Contracting Party for engaging in activities enumerated in paragraph 1 of Article III of the present Treaty upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of such other High Contracting Party.

Corporations and associations, created, organized or participated in by nationals, corporations or associations of either High Contracting Party pursuant to the foregoing rights, shall be permitted to engage in the activities enumerated in paragraph 1 of Article III of the present Treaty upon terms no less favorable than those now or hereafter accorded to any corporations and associations of the other High Contracting Party, created, organized or participated in by its own nationals, corporations and associations.

Article VIII

The nationals, corporations and associations of either High Contracting Party, shall, within the territories of the other High Contracting Party, be permitted, in pursuit of defense of their rights, to gain access to courts of justice and administrative tribunals of all kinds and in all degrees of jurisdiction and to choose and employ lawyers and representatives upon terms no less favorable than the terms which are or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party and no less favorable than those which are or may hereafter be accorded to the

nationals, corporations and associations of any third country. Corporations and associations of either High Contracting Party, shall not, in the enjoyment of the protection under the present Article, within the territories of the other High Contracting Party, be required to register or to keep any establishment therein.

Article X

1. The nationals, corporations and associations of either High Contracting Party shall not, within the territories of the other High Contracting Party, be obliged to pay internal taxes, fees and charges imposed upon or applied to income, capital, transactions, activities or any other object, other or higher than those which are or may hereafter be imposed upon the nationals, residents, corporations and associations of any third country, nor shall be subjected to the requirements with respect to the levy and collection thereof more burdensome than those borne by the nationals, residents, corporation and associations of any third country.

2. The national of either High Contracting Party residing within the territories of the other High Contracting Party and the nationals, corporations and associations of either High Contracting Party engaged in economic and cultural activities within the territories of the other High Contracting Party, shall receive, with respect to the matters referred to in the preceding paragraph, treatment no less favorable than that which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party.

3. In the case of corporations and associations specified in the preceding paragraph and in the case of the nationals of either High Contracting Party engaged in economic and cultural activities within the territories of the other High Contracting Party but not resident therein, such other High Contracting Party shall not impose or apply any internal tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to such territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to such territories.

4. It is, however, understood that either High Contracting Party may accord to the nationals, corporations and associations of any third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue.

Article XVIII

1. In all matters relating to (a) custom duties and charges of every kind imposed on or in connection with importation or exportation, (b) the method of levying such duties and charges, and (c) the rules, formalities and condi-

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